IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 812 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNIL RATILAL SHAH

Versus

NEW INDIA ASSURANCE CO. LTD.

Appearance:

MR AK CLERK for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/11/2000

ORAL JUDGEMENT

Whenever you are in doubt, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him.

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written words so as to give force and life to the intention of legislature. A Judge should ask himself question how, if the makers of the Act had themselves come across this ruck to the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

Orality ad libitum may be the grounds of Victorian era advocacy but in our 'needy' Republic with crowded dockets, forensic brevity is a necessity. The Bench and the Bar must fabricate a new Shorthand form of court methodology which will do justice to the pockets of the poor who seek right and justice and to the limited judicial hours humanly available to the court if the delivery system of justice is not to suffer absolescence.

Judicial review has, I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality, which is recognised in the administrative law of several fellow members of the Economic Community.

Learned advocate Mr. Clerk is appearing for the petitioner. Learned advocate Mr. Mehta is appearing for the respondents. In this petition, by order dated 8.2.1993, rule was issued and it was made returnable on 21st June, 1993. In this petition, affidavit in reply has been filed by the respondents on 7th December, 1993.

The petitioner herein has challenged the order of removal of the petitioner from service passed by the respondents dated 17th August, 1992, received by the petitioner on 29th August, 1992, inter alia on the ground that it is arbitrary, capricious, unreasonable, irrational, violative of the provisions of Article 14 of the Constitution of India, based on extraneous and

irrelevant considerations, in utter disregard of the relevant consideration, vitiated by total non application of mind and also in disregard of the pronouncements and law laid down by this Court as well as the Hon'ble Supreme Court, illegal, null and void.

The facts of the present petition, in brief, are as under:

The petitioner herein was appointed as inspector in the respondent Company by order dated 31.12.1984. Said post of inspector was redesignated as Development Inspector and was then redesignated as Development Officer. That the petitioner has passed the examination of federation of insurance institute pursuant to which he was given appointment. The petitioner was confirmed in the respondent Company by order dated 14.5.1986 as Inspector Gr. I w.e.f. 1.2.86. The petitioner continued to work as development inspector thereafter.

On 1.5.87, the petitioner got married. The petitioner and his wife could not get along well and there was a lot of matrimonial disharmony and discord and, therefore, the petitioner and his wife filed a joint petition for divorce of marriage and the marriage was dissolved by mutual consent in the year 1990. It is the case of the petitioner that due to these problems, the petitioner used to remain under mental pressure and, therefore, he was irregular in attending the office. The petitioner was given show cause notice dated 25.7.1990 and, thereafter, the petitioner was chargesheeted vide chargesheet dated 5.10.1990 wherein it was alleged that the petitioner was used to remain absent frequently without permission and he failed and neglected to obey the lawful orders of the superiors and the petitioner was thus charged in terms of rule 3 and sub rule 7 and 8 of rule 4 and 18 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The petitioner has not submitted reply to the said chargesheet. Thereafter, by letter dated 2.4.91, hearing of the inquiry was fixed on 19.4.1991 and on that day, the petitioner admitted all the charges levelled against him. The petitioner admitted the charges because he was advised to do so and it was told that if he does so, he would be awarded very minor punishment and if he does not admit the charges, then he would be ultimately dismissed from service. Thereafter, the petitioner wrote to the inquiry officer on 9.5.1991 explaining the circumstances due to which he should be given lesser punishment. The petitioner had attended his duties in March, 1991 and was performing his duties upto June, 1991. However, because of his mother's

illness of serious heart trouble, the petitioner could not attend the office. The petitioner's mother was also advised to undergo by pass surgery on being examined cardio-anginagraphy. Due to such circumstances, the petitioner could not report for duty from June, 1991 onwards. The petitioner in the mean while handed over his authority letter and book of cover notes as per the instructions received by him from the company on 10.5.1991.The petitioner was unable to function as he was not in a position to take any insurance or put up any new business as he had no authority or power to issue cover notes as the same was withdrawn by letter dated 26.4.1990. The petitioner received new show cause notice dated 26.5.1992 on 30.5.1992 whereby he was called upon to show as to why he should not be imposed a major penalty of removal from service. Alongwith the said notice, the petitioner also received report of the inquiry officer dated 23.5.1991 and the proceedings of the inquiry dated 19.4.1991. The petitioner thereafter wrote letter dated 13.6.1992 wherein he has stated that he was attending the office regularly from 4.6.1992. However, he was not permitted to sign the muster roll. Thereafter, the petitioner had wrote letter to the Regional Manager on 27.7.1992 stating all the circumstances and praying for mercy. However, the petitioner was removed from service by impugned order dated 17.8.1992, communicated vide letter dated 19.8.92 received by the petitioner on 29.8.1992 and hence this petition before this Court.

Learned advocate Mr. Clerk has read the petition as well as the relevant documents before this court and from the record, he has pointed out that in response to the chargesheet, specific rule 3 and 4 sub rule 7 and 8 and rule 18 has been alleged against the petitioner which is relating to remaining absent without leave or over staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory and habitual late or irregular in attendance. As per rule 18, the employees should not be absent from duty without permission or be late in attendance.

He has submitted that the petitioner has admitted all the charges before the inquiry officer and has requested for mercy while pointing out compelling circumstances for his remaining absent from duty. While referring to the inquiry proceedings, learned advocate Mr. Clerk has submitted that while admitting the charge levelled against him, the petitioner has requested to the inquiry officer to take on record the compelling

circumstances under which he had committed the alleged misconduct and has further requested that while deciding the punishment, the competent authority should take into consideration the submissions. Therefore, the inquiry officer has asked the petitioner whether he is ready to narrate the circumstances and he requested the inquiry officer to give him time to prepare his submissions in that regard and he was given time by the inquiry officer in that regard. Mr. Clerk has submitted that in inquiry report, the inquiry officer has specifically observed that the report is being submitted to the competent authority who may take appropriate decision thereon; the competent authority may also take into consideration the facts mentioned by the chargesheeted employee in his letter dated 9th May, 1991. Said report was accompanied by the letter dated 9th May, 1991. He has also pointed out that vide annexure "D" page 25, detailed submissions narrating compelling circumstances were made by the petitioner in the letter dated 9thMay, 1991 to justify his act of delinquency. Mr. Clerk has also submitted that in the said letter dated 9th May, 1991, the petitioner has in terms mentioned while requesting the authority that by the grace of the God, now, he is settled with his family, his widowed mother and younger brother and has further stated that he has faced lot of difficulties and problems which has affected his service with the company. In the said letter, he has also requested to consider his case sympathetically and favourably and has prayed for a chance to do his best in future. He has submitted that the disciplinary authority at the time of passing the impugned order of punishment, has not appreciated the circumstances pointed out by the petitioner in his letter dated 9thMay, 1991 and 13th June, 1992 and 27th July, 1992. He has also pointed out that at the time of passing the impugned order dated 17th August, 1992, letter dated 9th May, 1991 has been taken into consideration but no reasons have been given by the authority for not believing the circumstances which were pointed out by the petitioner. He has, therefore, submitted that the compelling circumstances pointed out by the petitioner while admitting the charge in letter dated 9th May, 1991 has been totally ignored by the competent authority and penalty of removal from service has been imposed by the authority. Mr. Clerk has, therefore, submitted that at the time of taking decision, the competent authority has not taken care to appreciate the compelling circumstances and request made by the petitioner for showing the mercy. Not only that, according to Mr. Clerk, unblemish past record of the petitioner has also not been taken into consideration by the competent authority. Therefore, according to him,

the impugned order dated 17.8.1992 in respect of the alleged misconduct of his remaining absent, looking to the compelling circumstances narrated in letter dated 9.5.1991, is absolutely harsh, disproportionate and arbitrary and therefore, same is required to be quashed and set aside.

Learned advocate Mr. Clerk has relied upon the following pronouncements of this court as well as of the apex court in support of his submissions :

(1) (Smt.) S.N. Jejurkar v. Director, N.C.C. & Anr. reported in 1993 (1) GLH 6.
(2) Natvarbhai S. Makwana v. Union Bank of India and others reported in 1984 GLH 791.
(3) S.K. Giri v. Home Secretary, Ministry of Home Affairs and anr., reported in 1995 (2) C.L.R. 597.
(4) Sushil N. Bhat v. G.S.R.T.C. Divisional Officer, Rajkot 1997 (1) GLH (UJ) 29
(5) Anna Malai and others v. Regional Manager Region IVth SBI and others reported in 1988 (1) LLJ 174.
(6) GSRTC v. Rama Samant Godhania reported in 2000 (2) GLH 231.

While referring to all the decisions cited at the Bar, the submission made by Mr. Clerk has been that the approach of the disciplinary authority while passing the impugned order of punishment should be rational and reasonable; every punishment does not call for severe punishment of dismissal or removal from service; nature of misconduct is to be kept in mind while imposing the punishment; right to impose punishment carries with it duty to act justly; punishment must be commensurate with the gravity of misconduct and the punishment disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. Therefore, according to Mr. Clerk, looking to the misconduct of remaining absent without prior permission because of the compelling circumstances of the petitioner cannot justify the dismissal when the petitioner has specifically without any dispute or challenge, admitted the charge before the inquiry officer. In such circumstances, punishment of dismissal is totally harsh and disproportionate looking to the gravity of misconduct.

In reply to the contentions raised by Mr. Clerk, learned advocate Mr. R.H. Mehta has submitted that the respondent co. has afforded enough and sufficient

opportunity to the petitioner and after considering the admission of the charge as well as to remain absent for a pretty long period which has adversely affected the working of the respondent company and also after considering the submissions made in the letter dated 9th May, 1991, the competent authority has passed the impugned order of removal and in such circumstances, this court is having very limited powers to interfere with the punishment imposed by the disciplinary authority; according to him, scope of judicial review for quantum of punishment is very much limited. In support of his such submissions, he has relied upon the decisions of the apex court in case of U.P. State Road Transport Corporation and others versus A.K. Parul reported in 1998 (9) SCC 416. Learned advocate Mr. Mehta has submitted that the apex court has consistently taken a view that while exercising the judicial review powers, the court shall normally not interfere with the punishment imposed by the authorities and this will be more so when the courts find that the charges were proved. He has further submitted that the imposition of proper punishment and exercise of discretion are the judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not the High Court while exercising the extra ordinary powers under Article 226 of the Constitution of India. Therefore, in short, it is the submission of Mr. Mehta that this Court should not interfere with the order of punishment and should not exercise the powers.

I have considered the submissions made by the learned advocates for the parties. In this case, almost all the facts are undisputed between the parties. There is no question of denial of the principles of natural justice. There is also no question that the findings recorded by the inquiry officer are baseless and perverse. In this case, the only question required to be considered by this court while exercising the extra ordinary powers under Article 226 of the Constitution is as to whether the punishment of removal from service imposed upon the petitioner is legal, valid and proper or not and whether it is shocking the conscience of the Court looking to the gravity of misconduct ?

It is an admitted position that the petitioner was appointed by the respondents with effect from 31.12.1984 and was removed from service by impugned order dated 17.8.1992. Therefore, at least nine years' service was rendered by the petitioner on the post of development officer. The respondents have not pointed out any past record of the petitioner. Nothing has been brought on

record that in past, he has committed such similar type of misconduct It is not the case of the respondent company that in past, any punishment or warning was issued to the petitioner for such similar type of misconduct. Therefore, it is the fact that the past record of the petitioner is clean and unblemish. In light of these facts which are not in dispute, compelling circumstances of the petitioner for his remaining absent from duty without prior permission of the company has to be appreciated and considered. In letter dated 9th May, 1991, the petitioner has narrated in detail such compelling circumstances which is on record of this petition at annexure "D" to the petition. It reads as under:

"i) that I am the only responsible elder person in my family. I have got my aged mother and a younger brother. I am coming from a respected Hindu Jain family. My marriage took place on 1.5.87. From the beginning, family problems started. I have done my best to settle the same but unfortunately, I have not been able to overcome those problems.

ii) I was under much tension during this period. Further, my younger brother also could not settle down in life. This has adversely affected the health of my aged mother. Marriage problem has created many other problems. As a result of which, I am unable to go out of my house. I have tried to solve my marriage problem through arbitration with social leaders of my religion. At the same time, I am hopeful of settlement for my marriage life.

I had also given an assurance to Regional Manager to become regular in the office but it was my bad luck that my problems were not solved through arbitration. Finally, I had to seek divorce through court.

iii) Now, I have started attending office regularly from 23.3.91. Before my above marriage problem, I have got two CD A/c. of M/s. Shramik Motors CD A/c. No. l603 and M/s. Gatyatri Auto Centre CD A/c. No. 695. The above agents I have lost during this period. Now, I am mentally settled to procure the new business but I have lost my authority power to issue cover note. Because of this, I am facing difficulties in getting the business.

Sir, I am to request you that with the grace of God, I have settled in my family with my widow mother and younger brother. I have faced lot of difficulties and problems which has affected my service with the Company.

I hope and trust that you will consider my case sympathetically and favourably and give me a chance to do my best in future.

I assure you that I will be regular henceforth. I will not give any chance of complain to my superior.

I may also add here that the covernote and letter of authority which were demanded of me have been returned by me to Branch Office Valsad."

Thus, the circumstances which were narrated by the petitioner is not disputed by the respondent Company. It is not the case of the respondent company that such circumstances are bogus or created one or got up. The respondents have not doubted the correctness or genuineness of the circumstances narrated by the petitioner in his letter dated 9th May, 1991. Therefore, these circumstances have to be believed. Now, therefore, in view of such circumstances, it has to be considered as to whether the petitioner who remain absent from duty can be justified or not. Looking to the circumstances, the period of remaining absent from duty comes to about eleven months because in chargesheet dated 5.10.1990, it was alleged that the petitioner remained absent from the office since 17th April, 1990 and in representation dated 9th May, 1991, the petitioner has pointed out that he is attending the office regularly from 23rd March, 1991. Therefore, total period comes to about eleven months. Looking to the circumstances narrated by the petitioner, due to matrimonial problems and also in view of the sickness of his mother, the petitioner was not able to resume during this period. It is required to be noted that the petitioner has not disputed the charge of his remaining absent and has approached the respondent company with folded hands and has requested the authority to condone his lapses with sympathetic approach. Therefore, this conduct is also very important that the petitioner has not denied the charge and has also not disputed the allegations made against him. On the contrary, has admitted the same and has explained the circumstances under which he was compelled to remain absent and has prayed to show mercy. Therefore,

according to my view, misconduct of remaining absent due to such compelling circumstances cannot be considered to be serious misconduct when the petitioner has admitted the charge leveled against him and when the petitioner has prayed for mercy in view of such circumstances. I am of the view that it cannot be said that the petitioner was justified for his remaining absent in view of such circumstances but as per my view, in view of such circumstances, act of delinquency on the part of the petitioner cannot be considered to be a serious misconduct warranting extreme penalty of removal from service and the respondents are not justified in taking such a harsh action against the petitioner.

It is the duty of the competent authority at the time of passing the order of punishment to consider all the relevant factors before passing any order of punishment. Relevant factors are that the gravity of misconduct, length of service, compelling circumstances, social, economic and family back ground of the employee and past record of the employee. Such relevant factors are required to be considered at the time of passing the order of punishment. In the instant case, the competent authority has not considered these relevant factors namely compelling circumstances which were narrated by the petitioner and the past record the petitioner has also not been considered before imposing extreme penalty of removal from service. Relevant observations made by this court in case of (Smt.) S.N. Jejurkar versus Director, National Cadet Corps and Another reported in 1993 (1) GLH 6, in para 9, are as under:

"9. The aforesaid observations make it abundantly clear that the approach of the Disciplinary Authority while imposing punishment should be rational and reasonable. Every misconduct does not call for a severe penalty of dismissal or removal. The nature of misconduct is to be kept in mind while imposing the penalty. The right impose the penalty carries with it the duty to act justly. The penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India. Oscar Wilde's discum "MOderation is a fatal thing.Nothing succeeds like excess" cannot be accepted in the present day context in the country wedded to the principle of equity before law in the matter of employment. There must be graded punishment for graded misconduct because the penalty is just

which fits the misconduct and does not suffer from undue mitigation or immoderate exaggeration. True it is that discipline in any administration is to be maintained and wilful and unauthorized absenteeism from duty cannot be permitted for a long period when no justifiable reasons are forthcoming for such wilful absenteeism from service.

The duration of absenteeism from service is undoubtedly a relevant factor. At the same time, the authority is required to weigh in the scale the factors which prevented the employee from attending to duties, and if factors are referable to genuine, personal difficulties of the employees and/or his/her family members, the Disciplinary Authority cannot afford to neglect such factors by imposing the arbitrary punishment of dismissing and/or removing the employee from service. If the purpose of punishment is to teach a lesson to the employee and to prevent the employee from repeating such conduct in future, in my opinion, a chance shall have to be given to the employee to continue in service. In such cases, dismissal/removal or compulsory retirement from service may act too harsh, excessive, unreasonable, irrational and disproportionate to the charge for which the penalty is imposed. The cases where the employee has wilfully remained absent without any intimation and has settled in foreign country, or cases where the employee has wilfully remained absent and has been serving elsewhere or has been carrying on business stand all together on a different foting and the Disciplinary Authority may be justified in such cases to impose the penalty of dismissal or removal. However, in cases where due to sickness, due to hardship to the family and due to peculiar circumstances in the family, not permitting the employee to present himself/herself for duty, penalty of dismissal/removal or compulsory retirement would act too harsh. In my opinion, such an employee have to be provided an opportunity to improve himself/herself and to see that such a misconduct is not repeated. Such an approach would necessarily bring about a change in the employee, would provide an opportunity to him/her and would provide an opportunity to the employer to watch the conduct of the employee in future. If such conduct is blissfully without any remorse

repeated and employee does not show any improvement or remains incorrigible harsh penalty would be justified. "

In case of Sardarsing Devising versus D.S.P. Sabarkantha District reported in 1985 (2) GLR page 1368, this court has observed as under in para 6 of the reports:

"When an authority is conferred with the power to inflict one of the several penalties such as caution or censure, reprimand, extra drill or duty, fine, stoppage of increments, reduction in rank, removal or dismissal, it is obvious that the authority must give a serious thought to the question of choice of penalty. The choice cannot be arbitrary but must depend on the nature of misconduct established in a given case. Just as a road roller cannot be brought to crush a fly, so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave. The consequences of removal or dismissal from service are severe, sometime, entire family is ruined because another job or work may not be easy to find and, therefore, it is all the more necessary that the punishment of removal/dismissal should be invoked sparingly and in cases which can be described as gross, such as receiving or defalcation of public funds, behaviour which is morally reprehensible, gross abuse or misuse of authority, etc. However, if a policeman remains absent without leave, it certainly has an adverse effect on disciplined force which can be remedied by imposing a lighter penalty such as withholding of increments or the like."

In case of Ranjit Thakur v.Union of India, reported in AIR 1987 SC 2386, the apex court has considered the question of proportionality in the matter of awarding punishment under the Army Act and it was observed, thus :

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of

proportionality as part of the concept of judicial review would ensure that even on an aspect which is otherwise within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then, the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

Similarly, in case of Bhagat Ram versus State of Himachal Pradesh reported in AIR 1983 SC 454, the apex court has held at under at page 460 of the reports :

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of themisconduct would be violative of Article 14 of the Constitution."

In two cases, the apex court has considered the punishment of dismissal in case of remaining absent without prior permission and has held it to be harsh and disproportionate, in case of Union of India and others versus Giriraj Sharma, reported in AIR 1994 SC 215 and in case of Saiyad Zahirhusen v. Union of India and others reported in 1999 SCC Lab. & Service 666.

I have also considered the law laid down by the Hon'ble apex court in case of U.P. State ROad Transport Corporation and others versus A.K. Parul reported in (1998) 9 SCC 416. However, recently, in case of U.P. State Road Transport Corporation and others versus Mahesh Kumar Mishra and others reported in AIR 2000 SC 1151, the apex court has held that the High Court can interfere if the penalty shocks conscience of the Court. In the said decision, the apex court has held as under in para 7,8 and 9 of the reports :

"7. A Three Judge Bench of this Court in B.C.Chaturvedi v. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4375 : AIR 1996 SC 484:1996 Lab IC 462) laid down as under (para 18 of AIR, Lab IC)-

'A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact

finding authority have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High COurt/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof. '

8. This will show that not only this court but also the High Court can interfere with the punishment imposed upon the delinquent employee if that penalty shocks the conscience of the court. The law, therefore, is not as contended by the learned counsel for the appellants, that the high court can in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another Three Judge Bench of this court in Colour Chem Ltd. V. A.L.Alaspurkar, (1998) 3 SCC 192 : (1998 AIR SW 709:AIR 1998 SC 948:1998 Lab IC 974) has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the court to interfere.

10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the bus for which the punishment of dismissal from service was highly disproportionate."

Thus, the High Court can interfere with the punishment imposed by the Disciplinary Authority if it is shocking the conscience of the Court and if it is disproportionate to the charge levelled against the

delinquent employee. In the facts of the instant case also, though the petitioner has admitted the charge and has narrated the the circumstances under which he could not attend the office and remained absent from duty. The petitioner has prayed for showing some mercy. However, the impugned order of extreme penalty of removal from service has been passed without taking into consideration such compelling circumstances. Therefore, the impugned order of removal is shocking the conscience of the court and is disproportionate to the charge levelled against the delinquent employee and, therefore, in view of this recent judgment of the apex court, this court can interfere with the punishment imposed by the disciplinary authority.

In view of this view taken by the apex court as well as this court, the punishment of removal for remaining absent without prior permission of the employer has been considered to be harsh and disproportionate punishment. In the instant case, according to my view, the petitioner who has worked with the respondent with unblemish record for about more than eight years and has remained absent for a period of about eleven months due to compelling circumstances quoted hereinabove which were narrated by the petitioner in his letter dated 9.5.1991 and at the time of receiving chargesheet, the petitioner has not disputed the charge levelled against him but has admitted the same with a prayer to show some mercy and even the inquiry officer has also recommended the competent authority in his report to consider the case of the petitioner which has been narrated in his letter dated 9thMay, 1991. However, the competent authority has while passing the impugned order dated 17th August, 1992, only referred to the said letter but has not given any reason to the effect that the compelling circumstances which were narrated by the petitioner were not genuine or correct and, therefore, same were not accepted by him. However, without giving any such reason and also without giving any reason for imposing such extreme penalty, has passed the impugned order imposing such harsh and extreme penalty ignoring compelling circumstances which were narrated by the petitioner. While passing the impugned order, the competent authority has also ignored the past unblemish record of the petitioner. Therefore, according to my view, punishment of removal is totally disproportionate to the misconduct which has been found to be proved against the petitioner on the basis of his admission and such punishment would shock the conscience of the court because apparently it is an arbitrary order of punishment passed against the petitioner who has pointed out from the very beginning the compelling

circumstances to the competent authority. However, such compelling circumstances were not at all taken into consideration by the competent authority. In the letter dated 9th May, 1991, in respect of the allegation of failing and neglecting to obey the lawful orders of the superior in respect of issuance of cover notes and the signing authoritygiven to the petitioner, the petitioner has failed to hand over the original letter and blank cover notes to the branch manager as per letter dated 26th April, 1990, the petitioner has mentioned in the Explanation that the cover note and the letter of authority which was demanded by the respondents have been returned by the petitioner to the branch office, Valsad. Therefore, the lawful orders issued by the authority has been complied with by the petitioner within the reasonable period. This fact asserted by the petitioner in the letter dated 9th May, 1991 has not been controverted or disputed by the respondents before this Court. I am, therefore, of the view that the impugned order dated 17th August, 1992 is disproportionate, unjust, arbitrary, and shocking the conscience of the court and, therefore, this court is having power to interfere with the same in exercise of the powers under Article 226 of the Constitution of India to set aside such punishment which is shocking the conscience of the court. Apparently, in the facts and circumstances of the present case, the impugned order is highly disproportionate to the charge levelled against the petitioner looking to the gravity of the misconduct alleged against and admitted by the petitioner. Therefore, the impugned order of punishment dated 17th August, 1992 removing the petitioner from service is required to be quashed and set aside.

Since the impugned order of removal dated 17th August, 1992 is required to be quashed and set aside as stated hereinabove, the question then would be as to what consequential reliefs the petitioner would be entitled to. Normally, in case when the punishment order of removal/dismissal from service is quashed and set aside by the Court, then, the petitioner, as a consequence thereof, becomes entitled for being reinstated in service with continuity of service and full back wages. However, this is not the case in which complete relief can be granted in favour of the petitioner. Some punishment is required to be imposed upon the petitioner so that he also may realize for his remaining absent for a period of about 11 months and, therefore, according to my opinion, in the facts and circumstances of the case, the petitioner is required to be reinstated in service with continuity of service but is not entitled for full back

wages for the intervening period. In the facts and circumstances of the case, it would be just and proper if the petitioner is directed to be reinstated in service with continuity of service and with 40% of the back wages for the intervening period. According to my opinion, denial of 60% of the back wages for the intervening period to be a punishment to the petitioner and over and above that, his two annual increments should be stopped with cumulative effect for the misconduct of his remaining absent as per the charge sheet dated 5th October, 1990.

Accordingly, this petition is partly allowed. The impugned order of removal dated 17th August, 1992 is hereby quashed and set aside. The respondent Company is directed to reinstate the petitioner in service with continuity of service, with 40% of the back wages for the intervening period from the date of his dismissal till the date of reinstatement in service as per the order passed by this court and the respondents are further directed to stop two annual increments of the petitioner with future effect. The respondents are further directed to reinstate the petitioner in service with continuity of service within six weeks from the date of receipt of certified copy of this order and to pay 40% of the back wages for the intervening period to the petitioner within ten weeks from the date of receipt of certified copy of this order. The respondents are also directed to treat the petitioner in service for all purposes during the intervening period and to fix the salary of the petitioner as if he has not been removed from the service by fixing his salary by taking into consideration the revision of wages/salary which as taken place from time to time during the intervening period. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

10.11.2000. (H.K. Rathod,J.)

Vyas